



VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

Historic Preservation Easement Program

POLICY #8

Easement Program Recordkeeping

The Virginia Department of Historic Resources (DHR) has created a written records policy for the Easement Program in conjunction with the Agency's established Records Retention Policy. The Easement Program Recordkeeping Policy governs how specific program related organizational and transactional records are created, collected, retained, stored and disposed. Originals and duplicates of all irreplaceable documents critical to the defense and support of each easement and easement-related transaction will be retained and stored by staff members. The recordkeeping mission of the Easement Program is to appropriately collect, retain, and archive key documents and records essential to the function of the program. The Easement Program Coordinator with assistance from the Easement Program Manager shall have the primary responsibility for recordkeeping.

I. LAND TRANSACTION RECORDS

1. Lists, Reports, and other Compilations:

The Virginia Department of Historic Resources takes seriously its role as an easement-holding organization and strives to meet or exceed all recommendations and guidelines for such organizations. In doing so, the Easement Program Coordinator, in conjunction with Easement Program staff members, will compile information in accordance with the 2006 revisions to the Internal Revenue Service tax code (as set forth in the *Pension Protection Act of 2006*) and will continue to monitor the following easement data:

- A. number of easements held at beginning of year, acreage, and location
- B. number of easements (and acreage) acquired (new easements)
- C. number of easements modified, sold, transferred, released, or terminated (and acreage)
- D. number of easements in following categories:
 - 1. buildings and structures
 - 2. easements that encumber a golf course or portions of a golf course
- E. number of easements and acreage monitored by physical inspection or other means
- F. all easements on buildings and structures acquired after August 16, 2006, and show if each easement meets the requirements of section 170(h)(4)(B). These are

properties that are listed in the National Register or are contributing features of a National Register property.

G. number and nature of violations (Technical, Minor, and Major)

H. all project review requests by property name, file number, date received, and date closed

Note: Items D.1 and D.2 above shall be calculated from the effective date of this policy until such time as all historical easement records may be updated.

2. Recordkeeping and Records Storage:

Easement Program staff members will ensure the safety and security of the permanent files associated with easement properties. Key documents and records essential to the permanent files include: original signed and recorded Deeds of Easement, original signed Baseline Documentation Reports, original signed Present Condition Reports, critical correspondence, photographs, legal information, and monitoring reports from the property. These types of documents will be permanently retained in both paper and electronic format by utilizing the following recordkeeping policies:

A. Library of Virginia Archives:

Under the Virginia Public Records Act, (§ 42.1-79), the Library of Virginia is the official custodian and trustee of all state agency records transferred to the Archives, Library of Virginia (LOV). In addition, the Virginia Public Records Act §§ 42.1-76, et seq. of the *Code of Virginia* guides the retention and disposition of records. In compliance with the Virginia Public Records Act and the Virginia Department of Historic Resources Records Retention and Disposition Schedule (Specific Schedule Number 423-001; Easement Series Number 015284), original easement deeds, original Baseline Documentation Reports (BDR), and original Present Condition Reports (PCR) will be permanently archived in the LOV archival storage facility. The long-term goal of the Easement Program is to store copies of critical correspondence related to easement violations, project approval, and easement donation gift acknowledgment letters permanently at the LOV. The LOV files are open and accessible to the general public upon request.

The Easement Program Coordinator shall be responsible for transferring original signed and recorded easement deeds, Baseline Documentation Reports, and Present Condition Reports to the LOV on a semi-annual basis in conjunction with the Library of Virginia RM-17 Form. These files shall be accessioned chronologically by the recordation date of the easement deed. Until such time as these documents are transferred to the LOV archives, they shall be stored in a metal filing cabinet in the office of the Easement Program Coordinator.

B. Filing Rules and Protocols for Paper Easement Files:

Original and duplicate documents should be protected from daily use and reasonably secure from fire, floods, or other hazards. In order to attain this goal, a comprehensive paper easement project file shall be created for each new property brought into the easement program. (SEE APPENDIX A)

This paper file shall contain individual folders labeled: Easement and Amendments, Baseline Documentation and Present Condition Reports, Monitoring Reports (formerly referred to as Inspections), Photographs, Project Review, Archaeology, Reenactments (if applicable), Maps and Surveys, Correspondence, Legal, Violations, General Reports and Documents, and FIELD. Information to be retained within these individual easement folders includes: copies of the recorded deed of easement, copies of the signed Baseline Documentation Report, copies of the signed Present Conditions Report, owner contact information, project related letters and correspondence, project tracking sheets, project or site analysis information, title work, evidence of insurance, surveys, maps, aerial photographs, attorney notes or comments upon reviewing the transaction, information sent to landowners suggesting they obtain independent legal and financial advice, grant or funding information, Easement Acceptance Committee and Board Approval letters, and monitoring information. Oversize architectural records, plans, and drawings shall be stored at the rear of the file, if possible. The paper easement file shall be stored in the onsite file storage facilities at DHR and may be accessed by the public upon request.

The front of each paper easement file shall be labeled with the Property File Number, Historic or General Property Name, and County. A permanent record-keeping card shall be inserted into the front of each individual easement file. Each time a file is pulled from the Archives for use by any DHR staff member, the staff member pulling the file shall write his or her name and the dates during which the file was used.

Draft easement deeds or Baseline Documentation Reports shall be kept for use as pre-closing data and shall not be retained for permanent easement file storage.

Sensitive material pertaining to the retention of IRS-related documents, Social Security Information, Easement Appraisals, or personal Financial Records will be retained in a separate file with the Easement Program Manager. A copy of the material with sensitive information redacted shall be kept in the paper easement file.

Printed copies of digital photographs from site visits or project review shall be stored in the easement file.

C. Electronic Records

Scanned copies of each individual Easement Deed, Easement Amendment, Baseline Documentation Report, and Present Condition Report shall be stored

electronically in the Easement Program network location according to Section III and Appendix B below. If possible, electronic copies of project review letters, monitoring reports, correspondence, reports, and other information relevant to the easement property shall be scanned and stored in the electronic file.

II. ORGANIZATIONAL RECORDS

Organizational records assist with preservation of institutional memory and provide comprehensive documentation of the Easement Program since its inception. Original letters, program materials, agendas, minutes, and memoranda compiled over the years are extremely valuable and illustrate the purpose and mission of the program. These documents provide a unique testimony to the history of the Easement Program while supporting legal, fiscal, and administrative purposes.

The following organizational records shall be retained by the Easement Program Manager in a metal filing cabinet located at the Department of Historic Resources primary Richmond office:

- a. Employment and personnel records
- b. Financial Records
- c. Gift Acknowledgments and 8283 Forms, IRS-related documents, or other project financial records
- d. Grant proposals, agreements, reports, etc.
- e. Program files and other administrative records: strategic plans, annual plans, easement newsletters, and other communications materials
- f. State required records and reports
- g. Program Policies and Procedures

The following organizational records shall be retained by the Easement Program Coordinator both in electronic format and in a filing cabinet located at DHR's Richmond office:

Board Records:

- a. Lists of current and past Board Members
- b. Meeting notices and correspondence related to meeting agendas
- c. Agendas and Minutes of the Quarterly Board meetings
- d. Policies and Procedures
- e. Delegation of Authority
- f. Resolutions

Easement Acceptance Committee Records:

- a. Lists of current and past Committee members
- b. Meeting notices
- c. Meeting agendas and minutes
- d. Policies and Procedures
- e. Delegation of Authority

Easement Committee Records:

- a. Lists of current and past Committee members
- b. Meeting notices
- c. Meeting agendas and minutes
- d. Policies and Procedures
- e. Delegation of Authority

Policies and Procedures

- a. Copies of each Easement Program Policy with revisions
- b. Copies of internal Easement Program Procedures documents

Virginia Land Conservation Foundation Records

- a. Original Project Applications
- b. Original Scoring and Evaluation Sheets
- c. Program Related Notes and Correspondence
- d. Award Statistics

III. ELECTRONIC RECORDS

All easement data shall be stored on the DHR internal network in a separate Easement Program network location (SEE APPENDIX B) from other agency data. Critical program documents such as recorded deeds, recorded amendments, Baseline Documentation Reports, Present Condition Reports, project review letters, and critical correspondence, shall be scanned and retained in electronic format. The Department of Historic Resources backs electronic records on a daily basis and these records are taken offsite weekly to a separate location for storage.

A new electronic easement file shall only be created after recordation of the easement deed. All recorded easement deeds, recorded amendments, Baseline Documentation Reports, and Present Condition Reports, shall be scanned as electronic records and stored by individual file number in the Easement Program file on the DHR network. The electronic document shall identify either by cover sheet or properties information (metadata tags) the name and date of its creation as an electronic document.

All digital photographs from site visits or project review shall be stored electronically in the Easement Program file on the DHR network. These photos shall be retained at their original file size and appropriately labeled with the property name, file number, and site visit date. All electronic archival black and white photographs taken as baseline documentation and all digital photographs taken for Present Condition Reports or monitoring purposes shall be stored in the Easement Program network location only.

Only the following staff members of the Easement Program shall have the ability to alter or manipulate records in the electronic easement file: Easement Program Manager, Easement Program Coordinator, Easement Archaeologist, Easement Technical Advisor,

and Easement Program Architect. The Easement Program Manager shall be the Easement Program network location "Owner" who will grant permission to have staff members added or deleted from the group of users able to alter or manipulate (read/write access) records in the electronic easement file. Other DHR staff will have read-only access. A "drop box" shall be created for non-easement program staff members to upload easement-related data to the network. This data shall be reviewed by an easement staff member before transferring to the easement program network location.

The data contained in the Easement Database shall be maintained by the Easement Program Coordinator and other designated Easement staff members. This database shall contain a listing of all easement properties, transaction information, owner contact information, and general monitoring information. Technical support for the Easement Database will be the responsibility of DHR's Technology Administrator or an appropriate designee.

IV. DATA SENSITIVITY

In order to administer the Easement Program, staff must collect, compile, and retain both personal and project-related information for individual properties and landowners. Virginia law requires that state bodies not collect personal information about citizens unless it is required to provide services for the citizen. When sensitive information is collected, it must be protected from unauthorized access or disclosure. However, citizens also have the right to know how the information is collected, used, and who has access to it. Section 2.2-3704 of the *Code of Virginia* states that records are presumed open to public inspection, unless specifically made exempt pursuant to this chapter or other specific provisions of law:

2.2-3704: Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

Accessibility to public records is also regulated by the *Freedom of Information Act* (FOIA). Compliance with the provisions of this Act as well as Section 2.2-3700 of the *Code of Virginia* is administered by the Deputy Director of the Virginia Department of Historic Resources.

Specific provisions of Virginia law prohibiting disclosure of particular records are found throughout the Virginia Code. However, the following exemptions found in Section 2.2-3705.1 of the *Code of Virginia* have the strongest potential to impact Easement Program data:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.
2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.
3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.
4. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
5. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
6. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.
7. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.
8. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

In addition, Section 1.2.1 of the IT System and Data Sensitivity Classification as set forth in *Commonwealth of Virginia ITRM SEC501-01* defines sensitive data as “data which, if compromised with respect to confidentiality, integrity, or availability, could adversely affect COV [Commonwealth of Virginia] interests, the conduct of agency programs, or the privacy to which individuals are entitled. Data is classified as sensitive if compromise of that data results in a material and significant adverse affect of COV’s interest, the inability of the affected agency to conduct its business, and the breach of privacy expectations. Data sensitivity classification is determined by the agency, and is the responsibility of the Data Owner, as defined in the *COV ITRM Risk Management Guideline* (ITRM Guideline SEC506-00).”

Under this classification system, the following Easement Program data should be identified and classified as sensitive:

- a. Real property appraisals or Conservation easement appraisals
- b. IRS Form 8283
- c. Original Baseline Documentation Reports
- d. Original Present Condition Reports
- e. Original archival black and white photographs or digital photographs

V. DESTRUCTION

With few exceptions, easement program documents should be permanently retained. Pre-closing documents such as draft deeds of easement and draft baseline documentation reports may be destroyed upon recordation of the final easement document and signature of the Baseline Documentation Report.

VI. REVISIONS

This Recordkeeping Policy shall be evaluated on an annual basis.

[Adopted by the Virginia Board of Historic Resources in December 2008; revised policy adopted by the Virginia Board of Historic Resources in September 2009; revised policy adopted by the Virginia Board of Historic Resources in 2010]